

### **REMARKS**

This amendment is responsive to the Final Rejection of March 30, 2010. A Request for Continued Examination (RCE) accompanies this amendment. Reconsideration and allowance of claims 2, 4, 6-10, 12-14, 17, and 19-27 are requested.

### **The Office Action**

Claims 2, 4, 6-14, 16, 17, and 19-25 stand rejected under 35 U.S.C. § 103 over Kianl (US 2002/0161291).

### **The Claims Distinguish Patentably Over the References of Record**

First, claims 24 and 25 have been placed in independent form.

**Claim 24** calls for evaluating a form of the signal. Paragraphs [0068], [0072], and [0073] of Kianl do not suggest evaluating the form or shape of the signal. Rather, these paragraphs only relate to measuring signal strength.

**Claim 25** calls for evaluating the physiological data measurement signal based on an interference level. By contrast, paragraphs [0065], [0066], [0068], [0072] and [0073] of Kianl only address evaluating signal strength.

Accordingly, it is submitted that **claims 24 and 25**, and **claims 26 and 27 dependent therefrom** distinguish patentably over the references of record.

Independent **claim 13** has been amended to emphasize that claim 13 addresses a completely different type of system than Kianl, which is used in a different way for a different purpose to achieve a different end result. In the present application, the sensors which measure the physiological patient data are mounted to a body of a patient and the measuring apparatus is worn by the patient. This allows physiological data to be measured continuously and long-term.

One of the major uses for such a system is for patients who are ambulatory. Ambulatory patients do not find it convenient to be tethered to electronic equipment, such as the measurement display apparatus. To this end, the measuring apparatus communicates wirelessly with the measurement display apparatus, which is not worn by the patient. The display apparatus might typically be located in a fixed location. For example, for a patient who is well-enough to return home, but still

needs continuous monitoring, the measurement display apparatus is typically placed in a fixed, convenient location where it can be interconnected with a telephone line, the internet, or the like to communicate the wirelessly downloaded patient physiological data to a physician, hospital, or the like.

The patient is often not where the measurement display apparatus is located. When the sensors are initially being installed or repositioned, it is important to know whether they have been appropriately positioned to give a good quality signal. Further, a sensor may come loose during normal daily activities causing a loss or degradation in the signal quality. Leads from two or more sensors may become positioned in a juxtaposed manner which causes cross-talk or other interference. A patient may move sufficiently close to a source of electrical interference that the signals are distorted or to superimpose static or other stray signals into the leads. Numerous other scenarios are also possible.

Claim 13 calls for the body mounted measuring apparatus that is worn by the patient to evaluate the signals from the sensors for signal quality and indicates the quality to the patient. This enables the patient to initially mount the sensors, remount the sensors, reposition the sensors or the like, wherever the patient might be, without going to the measurement display apparatus.

Kianl, by distinction, is directed to a portable monitoring device, such as an SPO2 monitor wherein the SPO2 sensor is tethered to a display device **101** by a cable **10**. The signal strength meter is located on the display device **101** and indicates the strength of the signal received by the display device. Thus, in Kianl, the patient needs the display device to mount, position, or reposition the sensors.

It should be noted that the Examiner references Figure 1C of Kianl. Figure 1C illustrates a full-featured, stand alone pulse oximeter **105**. It is only Figures 1A and 1B that illustrate a hand-held oximeter. The docking station **103** (Figure 1B) is described as including the battery charger for the hand-held unit. Kianl does not disclose what equipment is interfaced with the stand-alone pulse oximeter **105**. From the drawings, it appears to a computer which could further analyze or add additional functionality to the stand-alone unit and a larger monitor to display the same or additional information as the stand-alone unit.

Kianl does not disclose or fairly suggest body mounted sensors and a body-mounted measuring apparatus which communicates wirelessly with a remote measurement display apparatus. Moreover, rather than evaluating the signals on the patient, Kianl evaluates the signals received by the full function stand-alone pulse oximeter **105** or the hand-held and tethered pulse oximeter **101**, neither of which are worn by the patient. The patient in Kianl must see the display **210** of the hand-held or stand-alone pulse oximeter unit to determine whether a sensor is properly placed or has come off. Kianl cannot determine that a sensor has come loose or that it is properly positioned without viewing the measurement display apparatus. Moreover, the display only displays signal strength and does not indicate signal degradation for other reasons.

The dependent claims have been amended to depend from claim 13 and to focus more specifically on the preferred embodiment, particularly to set forth various aspects not shown by Kianl.

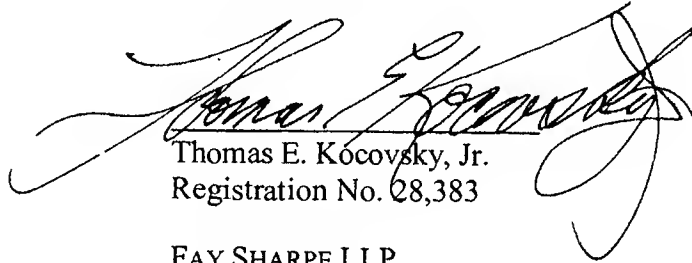
Accordingly, it is submitted that **claim 13** and **claims 2, 4, 6-10, 12, 14, 17, and 19-23 dependent therefrom** now distinguish patentably and unobviously over Kianl.

**CONCLUSION**

For the reasons set forth above, it is submitted that claims 2, 4, 6-10, 12-14, 17, and 19-27 are not anticipated by and distinguish patentably over the references of record and meet the other statutory requirements. An early allowance of all claims is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, the Examiner is requested to telephone Thomas Kocovsky at 216.363.9000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas E. Kocovsky, Jr.", is written over a horizontal line. The signature is stylized with large, flowing loops.

Thomas E. Kocovsky, Jr.  
Registration No. 28,383

FAY SHARPE LLP  
The Halle Building, 5th Floor  
1228 Euclid Avenue  
Cleveland, OH 44115-1843  
Telephone: (216) 363-9000 (main)  
Telephone: (216) 363-9122 (direct)  
Facsimile: (216) 363-9001  
E-Mail: [tkocovsky@faysharpe.com](mailto:tkocovsky@faysharpe.com)